

COUNTY OF KAUAI
Minutes of Meeting
Open Session

Board/Committee:	LIQUOR CONTROL COMMISSION	Meeting Date	May 18, 2017
Location	Mo‘ikeha Building, Meeting Room #3	Start of Meeting: 4:01 p.m.	End of Meeting: 4:47 p.m.
Present	Chair Jean Iida; Vice Chair William Gibson; Members: Shirley Akita, Paul Endo, Maryanne Kusaka, Gerald Matsunaga, and Gary Pacheco Also: Liquor Control Staff: Director Gerald Rapozo, Private Secretary Cherisse Zaima; Deputy County Attorney Sinclair Salas-Ferguson		
Excused			
Absent			

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SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Iida called the meeting to order at 4:01 p.m. with 7 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 7 members were present.	
Approval of the Agenda		Mr. Matsunaga moved to approve the agenda. Mr. Gibson seconded the motion. Motion carried 7:0.
Violation Hearing	<p><u>THE LODGE AT KOKEE</u>: Violation of Rule 3.12 Commission Orders.</p> <p>Mr. Robert Ballantine, General Manager, was present to represent the licensee; no counsel. Mr. Ballantine admitted to the charges.</p> <p>Mr. Ballantine explained that he had on-going issues with the accountant for the past year, but she has since been terminated. He now has a new bookkeeper, and apologized for being late. However, Mr. Ballantine stated that he feels making him drive all the way down from Kokee for a check that was only 10 days late is a bit excessive, and he feels that the</p>	

	<p>Commission could have easily sent him a notice that the check was late, and inform him of what the late fee is. He added that it is much more expensive for him to drive down from Kokee than it is to pay \$150.</p> <p>Commissioner Matsunaga referenced the investigator's report, and asked to clarify that Mr. Ballantine understands that there were two prior offenses, and that this would be the third. Mr. Ballantine stated he admits all of the offenses were for lateness. Commissioner Matsunaga pointed out one offense was for failure to submit a fight and disturbance report within 7 days, and the other for allowing the playing of non-permitted games to which Mr. Ballantine agreed, but added that the games were being played in the coffee shop, not in the bar. Mr. Ballantine further explained that had he been on time in submitting the request and the list, the Department would have received it on time. He stated that he is in a very difficult situation in trying to run a restaurant at the top of a mountain with difficulty finding qualified staff that show up regularly, but he is learning and does acknowledge that this is third infraction.</p> <p>Commissioner Gibson asked if the licensee has daily mail service at the establishment to which Mr. Ballantine replied yes, and added that the bar is a very small part of their operation, and constitutes less than 12% of their overall sales. Food is served from 9:00 a.m. to 4:00 p.m. 365 days of the year. Commission Gibson asked why the fight and disturbance report (from the previous violation) couldn't have been mailed via postal service to which Mr. Ballantine explained that he took some time following the incident to investigate and interview staff about what had happened since he had not been at the restaurant that particular day. Instead of submitting it within 7 days, he submitted it in 10 days. Mr. Ballantine admitted he was late, but added that he was not that late; same with the check for payment of the previous violation. He was late, but not that late, and he feels it is not such a horrible infraction.</p>	
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	<p>Commissioner Endo asked how long he has owned the business to which Mr. Ballantine explained he does not own the business, but rather manages it for Kikiaola, and has been doing it for a year and a half. He added that when he took over, the situation was dire. He detailed some of the issues he has with the bad physical structure of the building and all the necessary repairs that have to be patched here and there due to lack of funding from the State. Mr. Ballantine stated this is his first time running a restaurant, so he is under a great burden to learn about this type of business.</p> <p>Commissioner Kusaka commented that the Lodge at Kokee is such a nice establishment to have up there as it is a long way to Kokee, and it's nice to be able to stop for something to eat. Mr. Ballantine stated they have now added a coffee shop, which has been a great addition, and has worked hard to upgrade equipment as well as provide training for the staff. The lodge is a fond memory for him, and he took it over because he felt it was being managed very poorly. Commissioner Kusaka added it is commendable to have someone running a restaurant up there to which Mr. Ballantine stated what the Commission also needs to understand is that nothing gets delivered there, and the staff has to drive down to Waimea to pick things up; that extra layer of coordination can be quite cumbersome. Commissioner Kusaka stated the Commission would expect the licensee to follow the rules to which Mr. Ballantine replied that if someone had told him that a check that was 10 days late was going to result in this kind of response, he certainly would have paid more attention. He noted that he read through all the rules and could not find a rule that said there is a violation for paying a fine 10 days late.</p> <p>Commissioner Akita stated that she is quite bothered by Mr. Ballantine's attitude as he is coming across as if this is no big deal, so why bother; just let me pay my fine and get out of here. She pointed out that if they were to run the Liquor Control Department like that it would be problematic as they must be fair to everyone that comes before them. She feels Mr. Ballantine</p>	
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	<p>needs to reexamine his attitude and his acknowledgement of the Liquor Commission's rules and regulations. Commissioner Akita stated she does enjoy the licensee's establishment when she visits Kokee, but she would like to feel confident that all the rules and regulations are being upheld. Mr. Ballantine replied that they are very serious about the Liquor Commission's rules to which Commissioner Akita asked why then does he make light of the situation; she would hope he is just being facetious about it.</p> <p>Mr. Ballantine stated that he does take the Commission's rules very seriously, and it is not his intention to imply otherwise. He stated that his concern as a business owner is to have to drive down from Kokee to come before the Commission when he feels a simple letter of reprimand and demand for \$150 would be adequate. He noted that it seems the Commission feels that the amount is not sufficient in terms of the punishment. Commissioner Akita commented that the fine could actually be much more. Mr. Ballantine stated he is aware the Commission can fine him whatever they like, but his concern is that the first infraction was for people playing board games in the coffee shop, and if people bring him another game, he cannot allow it to be played unless he notifies the Liquor Department. He feels some pressure as a business manager to handle everything else, and feels that this is punitive.</p> <p>Commissioner Pacheco asked whether he has ever managed an establishment like this before to which Mr. Ballantine replied no. In the past he has managed animation studios and large scale projects for media production companies. Learning how everything works in a restaurant business has been a crash course for him, and has been quite challenging.</p> <p>Commissioner Akita asked to clarify whether the non-permitted games were in the coffee shop to which Director Rapozo replied the entire building is licensed, which includes the coffee shop, restaurant, and sundry store.</p>	
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	<p>Commissioner Matsunaga commented that if the payment was due on April 3, and Mr. Ballantine had paid it on April 4, he would still be cited for a violation. Much like paying your taxes, if you try to pay it a day later you incur a penalty; a due date is a due date, and the amount of days it exceeds does not matter. Mr. Ballantine apologized and stated he did not mean to make it sound as though he was minimizing the amount of days he was late, but noted he had signed the check on April 30; however, it was not received by the Department until May 13. He has since changed the system with the new accountant, and is much more directly involved.</p> <p>Commissioner Gibson asked to clarify that Mr. Ballantine stated the liquor sales represent approximately 12% of gross, and if that 12% is important it would behoove the licensee to become very familiar with the rules. Mr. Ballantine commented that reading the Liquor Commission rules is a challenge even with the advanced degrees in English he holds. He is unable to make heads or tails of many things. He stated for example a recent questionnaire he had to fill out for renewal of their liquor license, which felt much more complicated than it needs to be. He feels there should be a clearer way to explain all the rules and regulations and what they are for. Mr. Ballantine stated currently the Department sends out a “primer” of what the rules are, but that does not always agree with the actual rules. Mr. Ballantine explained how he feels things could be handled, stating that the investigator could show up, see the games are being used by families, then give him a form to fill out to list the games.</p> <p>Commissioner Pacheco commented that should Mr. Ballantine find that he does not understand the rules, he can always contact the Liquor Control staff; that’s what they are there for to help licensees understand the rules. It is the responsibility of the manager to ensure he or she understands every function of the county’s laws; if you don’t it will cost you. Commissioner Pacheco’s suggestion to Mr. Ballantine is to contact the Liquor Control Department staff should he need help, and not to assume anything. The</p>	
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	<p>intent of the rules is not to penalize anyone, but there are consequences if the rules are not adhered to. Mr. Ballantine again stated that he reviewed all the material and was not able to find any rule pertaining to a penalty for being late with a fine payment. Director Rapozo pointed out that the actual violation is of Rule 3.12 Commission Orders, noting any violation penalty is always at the discretion of the Commission.</p> <p>The violation hearing was closed.</p> <p>Commissioner Akita commented that while she appreciates the amount motioned for, she feels it is excessive. Commissioner Kusaka agreed.</p>	<p>Mr. Matsunaga moved that a fine of \$1,000 be imposed with \$500 suspended provided there is no conviction of the same offense within 1-year. Mr. Pacheco seconded the motion. Motion carried 5:2. (Nay – Akita, Kusaka)</p>
New Liquor License	<p><u>HANALEI BREAD COMPANY</u>: Application No. 2017-087 was filed on January 12, 2017 by Hanalei Bread Company LLC dba Hanalei Bread Co. for a Restaurant Beer & Wine (no live music, no dancing) license located at 55161 Kūhi‘ō Highway, Hanalei, Kauai, Hawaii.</p> <p>There was no one present at the time to represent the licensee; item moved to the end of the meeting.</p>	
Approval of the Minutes	<u>APPROVAL OF THE MINUTES OF MAY 4, 2017</u>	<p>Mr. Pacheco moved to approve minutes of May 4, 2017. Mr. Endo seconded the motion. Motion carried 7:0.</p>
1.	<p><u>DIRECTOR'S REPORT:</u></p> <p>a) <u>INVESTIGATORS' REPORTS</u></p> <p>b) <u>INCOMING COMMUNICATIONS:</u></p> <p>(1) From Avid Marketing Group</p> <p>(2) From Strike & Techel</p>	

	<p>c) <u>OUTGOING COMMUNICATIONS:</u> (1) To Avid Marketing Group</p> <p>d) <u>EMPLOYEES IN LICENSED PREMISES:</u> Managers and Assistant Managers – See Attachment</p> <p>e) <u>ACTIONS OF THE DIRECTOR:</u> (1) KILOHANA (2) PLANTATION GARDENS (3) THE WINE SHOP (4) WRANGLER’S STEAKHOUSE (5) PUUKUMU SCHOOL (6) KAUAI CHAMBER OF COMMERCE (7) KAUAI CHAMBER OF COMMERCE (8) EL AZTECA</p> <p>f) <u>INFORMATIONAL MATTERS:</u></p>	<p>Mr. Pacheco moved to receive Items 1(a) through (f). Mr. Gibson seconded the motion. Motion carried 7:0.</p>
2.	<p>a) <u>EXEMPTION OF RULE 7.12(b):</u> <u>KAUAI MARRIOTT RESORT:</u> Kauai High School overnight event in the Kauai Ballroom, from May 19, 2017 at 10:00 p.m. to 6:00 a.m. May 20, 2017.</p>	<p>Ms. Akita moved to call licensee for violation hearing. Mr. Pacheco seconded the motion. Motion carried 7:0.</p>
3.	<p>b) <u>CHANGE IN CORPORATE STRUCTURE:</u> <u>FOH HOSPITALITY, LLC dba THE WESTIN PRINCEVILLE OCEAN RESORT VILLAS:</u> Insertion of FOH Holdings, LLC into the current structure.</p>	<p>Mr. Pacheco moved to accept the change in corporate structure. Mr. Endo seconded the motion. Motion carried 7:0.</p>
4.	<p>c) <u>CHANGE IN CORPORATE OFFICERS:</u> <u>KAUAI BLUE INC.:</u> Removal of Michael Thomas Dojlidko as</p>	

	<p>President, Marshall James Donat at Vice President, and Jason Ronald Creed at Vice President. Addition of Sergio David River as President/CEO/Director, Jeanette Elaine Marbert as Executive Vice President/Director, William Loucks Harvey as Executive Vice President, Stephen Gatewood Williams as Senior Vice President/COO/Director, Heather Ann McGill as Senior Vice President/ CFO, Thorp Stockton Thomas as Senior Vice President/Director, Robin Lynn Suarez as Vice President/Assistant Secretary, Barbara Elizabeth Overton as Vice President/Assistant Secretary, Denis George Ebrill as Vice President, John Anthony Galea as Assistant Treasurer, Ralph Antonio Baro as Assistant Treasurer, Danielle Flammio Royden as Assistant Treasurer, and Victoria Jean Kincke as Assistant Secretary.</p>	<p>Mr. Pacheco moved to accept the change in corporate officers. Mr. Endo seconded the motion. Motion carried 7:0.</p>
5.	<p>d) <u>VIOLATION REPORTS:</u> <u>KAUAI BEER COMPANY:</u> Violation of Rule 7.4(e) Condition of Premises.</p>	<p>Mr. Pacheco moved to call licensee for violation hearing. Mr. Gibson seconded the motion. Motion 7:0.</p>
6.	<p>e) <u>REQUEST FOR PERMANENT INCREASE OF PREMISES:</u> <u>KAUAI BEER COMPANY:</u> Request to add an additional 1,600 square feet to include the building next door, which is presently being demolished and reconstructed into a Beer Garden, and the upstairs area above the currently licensed establishment as well as a future space that will be constructed above the Beer Garden.</p> <p>Director Rapozo stated the Department has received some information from the Building Division that there are some concerns with the licensee's permits. The recommendation from the Department would be to deny the request until the licensee resolves any issues with the Building Division.</p> <p>Mr. Jim Guerber, owner, was present. He stated the issue in question is a</p>	

doorway at the rear of the building between one brewery space and another; where the refrigerators for the restaurant are located. That space is not for customers, and has never been. Mr. Guerber admitted that he simply neglected to have that area licensed. He explained that it used to be two separate buildings that have since been combined, and was prohibited by the Building Division from having a doorway between two properties even though he owns both. He went through the process of combining the TMK's, which have already been approved, and resulted in the two buildings now being considered a single property. However, the second building is not part of the liquor license. Mr. Guerber is asking the Commission to approve the extension of his currently licensed premises to include the second building that is connected by both the doorway in question at the rear, as well as by the front entrance. Mr. Guerber stated they have always treated the second building as a licensed space, and has a question on what is considered licensed space versus unlicensed space as viewed by the Liquor Department.

Director Rapozo stated that the issues Mr. Guerber are bringing up can be addressed at his violation hearing at the next meeting.

Mr. Guerber explained he currently has a demolition permit for the space on the other side, and that permit shows the doorway. They are preparing to obtain a permit to rebuild that space, but the Building Division official that was working on it has since retired, therefore, everything has slowed down. He is asking that the Commission forgive the doorway, and allow him to use it while he is going through the permitting process.

Investigator Kenneth Herman, who has been in contact with the Building Division, explained that upon following up on the doorway with Building, he found out that the demolition permit issued to Mr. Guerber does NOT include the doorway. Mr. Herman was notified by the Building Department that they also issued a violation to Mr. Guerber for that doorway. In

	<p>addition, they have issued a permit for Mr. Guerber to CLOSE the doorway, which has not been picked up by the licensee yet. Mr. Herman summarized that according to the Building Division, that doorway is not authorized.</p> <p>Commissioner Pacheco asked if there is another access to that second building to which Mr. Guerber stated yes, through the restaurant.</p> <p>Commissioner Gibson asked to clarify that if Mr. Guerber were to apply for a liquor license for the entire property that would satisfy the Liquor Commission, but not the Building Division. Director Rapozo explained that the way the building is currently set up, it would be possible to do a permanent increase of premises to include the second space; however, he would first need to comply with the Building Division.</p> <p>Mr. Guerber explained that his architect is working on it, but since the Building Division has recently changed staff, it has been confusion. His architect does not have the final permit application ready yet, but the drawings for that application will include the doorway, but they don't know how long that process is going to take. Mr. Guerber stated he thought the Commission was ready to license the second part of the building, but the doorway is the current obstacle. Mr. Guerber will ask his architect to obtain a permit just for the doorway.</p> <p>Commissioner Gibson asked if there is any other way to create a path to that second building to which Mr. Guerber stated no, the only other access is through the main front entrance. He explained some of the issues he has been having with the Building Department regarding the combining of the properties, and the permits he is waiting on.</p> <p>Director Rapozo again stated the Department's recommendation to deny the request until the licensee has resolved all issues with the Building Division. He added that it would be improper for the Liquor Commission to grant</p>	
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	<p>something that is in violation of another department.</p> <p>Commissioner Kusaka replied that the licensee is only asking for that additional space where the doorway is. Director Rapozo replied no, he is asking to extend into the area beyond the doorway into the second building.</p> <p>Commissioner Matsunaga asked whether the licensee understands that for the Commission to approve something that is in direct violation of another Department’s code would be inconsistent. Investigator Herman added that the reason given by the Building Division for not approving the doorway, is that it states on the diagram that the present opening is to be closed due to fire safety related issues. Mr. Guerber explained that is because it used to be two different kinds of spaces, but now both spaces will be for the same type of use as factory space. He noted that the second building is to be demolished, and will be an open space with no customer access. Mr. Guerber commented that he finds it strange that this would be fine to do under the Liquor Department’s rules, but not under the Building Division; they should be able to enforce their own rules.</p>	<p>Mr. Pacheco moved to deny the request for permanent increase of premises until all of the requirements of the Building Division are met. Mr. Matsunaga seconded the motion. Motion carried 7:0.</p>
New Liquor License	<p>f) <u>NEW LIQUOR LICENSE:</u></p> <p><u>COCONUTS FISH CAFÉ:</u> Application No. 2017-123 was filed on May 11, 2017 by Fisherwood, LLC dba Coconuts Fish Café for a Restaurant Beer & Wine (no live music, no dancing) license located at 4-831 Kūhi‘ō Highway, Kapaa, Kauai, Hawaii.</p>	<p>Mr. Pacheco moved for publication and public hearing on Application No. 2017-123. Mr. Endo seconded the motion. Motion carried 7:0.</p>
Return to Public Hearing	<p><u>HANALEI BREAD COMPANY:</u> Application No. 2017-087 was filed on January 12, 2017 by Hanalei Bread Company LLC dba Hanalei Bread Co. for a Restaurant Beer & Wine (no live music, no dancing) license located at 55161 Kūhi‘ō Highway, Hanalei, Kauai, Hawaii.</p>	<p>The meeting recessed at 4:41 p.m.</p> <p>The meeting resumed at 4:47 p.m.</p>

	The applicant was still not present.	Mr. Endo moved for a continuance of the public hearing on Application No. 2017-087 to June 1, 2017. Mr. Pacheco seconded the motion. Motion carried 7:0.
Announcements	Next Scheduled Meeting: Thursday, June 1, 2017 – 4:00 pm, Mo'ikeha Building, Meeting Room #3.	
Adjournment		Chair Iida adjourned the meeting at 4:47 p.m.

Submitted by: _____
Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
Jean Iida, Chair